

ORDINANCE NO. 91-51

1 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
2 OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 17
3 OF THE PALM BEACH COUNTY CODE, ARTICLE V. ADULT
4 ENTERTAINMENT CODE, WHICH CODIFIES ORDINANCE NO.
5 88-31 AS AMENDED BY ORDINANCE NO. 89-8; AMENDING
6 SECTION 17.147. DEFINITIONS; AMENDING, ADDING AND
7 DELETING PORTIONS OF SECTION 17-152. APPEALS;
8 DELETING PORTIONS OF SECTION 17-163. APPLICATION;
9 DELETING AND ADDING PORTIONS OF SECTION 17-165.
10 REVIEW; AMENDING, DELETING AND ADDING PORTIONS OF
11 SECTION 17-182. PROHIBITIONS AT ESTABLISHMENTS
12 ALLOWING ALCOHOLIC BEVERAGES; AMENDING SECTION 17-
13 183. SUPPLEMENTARY REQUIREMENTS; AMENDING AND
14 DELETING PORTIONS OF SECTION 17-198. ENGAGING IN
15 PROHIBITED ACTIVITY; PROVIDING FOR CAPTIONS;
16 PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING
17 FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE
18 CODE OF LAWS AND ORDINANCES OF PALM BEACH COUNTY;
19 AND PROVIDING FOR AN EFFECTIVE DATE.

20 WHEREAS, Palm Beach County enacted the Adult
21 Entertainment Code in Ordinance No. 88-31; and

22 WHEREAS, Palm Beach County amended the Adult
23 Entertainment Code in Ordinance No. 89-8; and

24 WHEREAS, the Adult Entertainment Code has been codified
25 in the Palm Beach County Code in Chapter 17, Article V; and

26 WHEREAS, amendments to the Adult Entertainment Code are
27 necessary in order to comply with a court decision directed
28 against Palm Beach County regarding the adult entertainment
29 license application and to implement recent decisions of the
30 United States Supreme Court regarding regulation of Adult
31 Entertainment activity; and

32 WHEREAS, several provisions in the Palm Beach County
33 Adult Entertainment Code need clarification and correction.

34 WHEREAS, to comply with the United States Supreme Court
35 decision in FW/PBS, Inc. v. City of Dallas, this ordinance
36 provides an avenue for prompt judicial review of adult
37 entertainment license suspension, revocation or denial; and

38 WHEREAS, in order to control the secondary effects of
39 adult entertainment activity, it is necessary to regulate
40 activity that simulates nudity at commercial establishments

1 where alcoholic beverages are consumed; and

2 WHEREAS, physical contact of a sexual nature between
3 persons displaying specified anatomical areas and customers in
4 establishments where alcohol is consumed, promotes sexual
5 activity including prostitution, and promotes the spread of
6 communicable and social diseases.

7 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY
8 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

9 Part 1. The Adult Entertainment Code, Ordinance No. 88-
10 31, as amended by Ordinance 89-8 and codified in Chapter 17,
11 Article V. of the Palm Beach County Code of Laws and
12 Ordinances is hereby amended as follows:

13 Section 17-147. Definitions.

14 (4) *Adult dancing establishment:* An establishment,
15 including an establishment selling, serving or
16 allowing consumption of alcoholic beverages, where
17 employees display or expose specified anatomical
18 areas to others, regardless of whether the
19 employees actually engage in dancing.

20 . . .

21 (7) *Adult motel:* ~~Any hotel, motel, boardinghouse,~~
22 ~~rooming house or other place of temporary lodging which~~
23 ~~includes the word "adult" in any name it uses or~~
24 ~~otherwise advertises the presentation of adult material.~~
25 ~~The term "adult motel" is included within the definition~~
26 ~~of "adult theater."~~ A hotel, motel or similar commercial
27 establishment which offers accommodations to the public
28 for any form of consideration; provides patrons with
29 closed-circuit television transmissions, films, motion
30 pictures, video cassettes, slides, or other photographic
31 reproductions which are characterized by the depiction or
32 description of "specified sexual activities" or

1 "specified anatomical areas;" and has a sign visible from
2 the public right-of-way which advertises the availability
3 of this adult type of photographic reproductions.

4 . . .

5 (27) *Specified anatomical areas:*

6 a. Less than completely and opaquely covered:

7 1. Human genitals and pubic region; or

8 2. the opening between ~~Cleavage~~ of the human
9 buttocks, i.e. the anal cleft; or

10 3. That portion of the human female breast
11 encompassed within an area falling below the
12 horizontal line one would have to draw to
13 intersect a point immediately above the top of
14 the areola; this definition shall include the
15 entire lower portion of the female breast, but
16 shall not include any portion of the cleavage
17 of the human female breast exhibited by a
18 dress, blouse, shirt, leotard, bathing suit,
19 or other wearing apparel, provided the areola
20 is not so exposed; or

21 b. Human male genitals in a discernibly turgid
22 state, even if completely and opaquely
23 covered.

24 . . .

25 Section 17-152. Appeals.

26 ~~(a) Subject to division 2, within thirty (30) days of the~~
27 ~~mailing of a notice of denial of an application for a~~
28 ~~license or a notice of suspension or revocation of a~~
29 ~~license, the aggrieved party may file a notice of appeal~~
30 ~~with the circuit court.~~

31 (a) An aggrieved party has the right to immediately
32 appeal denial of a license application or revocation or

1 suspension of a license to Circuit Court in the Fifteenth
2 Judicial Circuit of the State of Florida. An appeal to
3 the Circuit Court must be filed within thirty (30) days
4 of the mailing of the written notice of denial,
5 revocation or suspension by the Occupational Licensing
6 Department.

7 ~~(b) In the event the notice of denial of an application~~
8 ~~for a license was grounded in whole or in part upon~~
9 ~~failure to comply with or satisfy all applicable zoning~~
10 ~~regulations, excluding the location distance provisions~~
11 ~~of section 500.31 of appendix F of this Code of Laws and~~
12 ~~Ordinances, the aggrieved party shall first file an~~
13 ~~application with the zoning board of adjustment for a~~
14 ~~variance within thirty (30) days of the mailing of the~~
15 ~~notice of denial, receive a public hearing before the~~
16 ~~zoning board of adjustment, and obtain a final decision~~
17 ~~therefrom within one hundred twenty (120) days of the~~
18 ~~date of application denial. If the board of adjustment~~
19 ~~grants the variance, the aggrieved party shall notify the~~
20 ~~occupational licensing department of the variance within~~
21 ~~thirty (30) days of the grant of the variance.~~

22 (c) (b) Notice. Any notice required under this code
23 shall be accomplished by sending a written notification
24 by certified mail, returned receipt requested, to the
25 mailing address set forth on the application for the
26 license. This mailing address shall be considered the
27 correct mailing address unless the occupational licensing
28 department of the ~~department of general services~~ Palm
29 Beach County Tax Collector's Office has been otherwise
30 notified in writing by certified mail, return receipt
31 requested, by the licensee of the new address. The
32 licensee shall have the burden of proving the

1 occupational licensing department received the new
2 address.

3 (d) (c) *Immunity from prosecution.* The county or any
4 department shall be immune from prosecution, civil or
5 criminal, for reasonable, good-faith trespass upon an
6 adult entertainment establishment while acting within the
7 scope of its authority under this code.

8 (e) (d) *Powers of board.* The board, sheriff or state
9 attorney may bring suit in the circuit court to restrain,
10 enjoin or otherwise prevent the violation of divisions 3
11 and 4 of this article.

12 . . .

13 Section 17.163 Application

14 (b) Contents. The application shall contain the
15 following information and shall be accompanied by the
16 following documents:

17 (1) If the application is:

- 18 a. An individual, his legal name, any aliases,
19 and date of birth;
- 20 b. A partnership, the full and complete name of
21 the partnership, and the legal names of all
22 partners, dates of birth, and all aliases used
23 by all of the partners, whether the
24 partnership is general or limited, and, if in
25 existence, a copy of the partnership
26 agreement; or
- 27 c. A corporation, the exact and complete
28 corporate name, the date of its incorporation,
29 evidence that the corporation is in good
30 standing, the legal names and dates of birth,
31 and all aliases used, the capacity of all
32 officers, directors and principal

1 stockholders, and, if applicable, the name of
2 the registered corporate agent and the address
3 of the registered office for service of
4 process; and

5 ~~(2) The application shall list the current local and~~
6 ~~legal domiciliary residential address of the principal~~
7 ~~stockholders of the corporation; for purposes of this~~
8 ~~subsection, principal stockholders are persons and not~~
9 ~~corporate or other legal entities; when the principal~~
10 ~~stockholder is a corporate or other legal entity, the~~
11 ~~application must trace back the ownership through any~~
12 ~~lawyers of corporate organization the eventual principal~~
13 ~~stockholder who is a person; {and}~~

14 ~~(3)~~ (2) If the applicant intends to conduct the
15 establishment under a name other than that of the
16 applicant, the applicant shall state the establishment's
17 fictitious name and the county of registration under
18 section 865.09, Florida Statutes (1985), all legal names,
19 date of birth, and all aliases used by all interested
20 persons; and

21 ~~(4) Whether preceding the date of the application, the~~
22 ~~applicant or any of the other individuals listed pursuant~~
23 ~~to subparagraph (1) above, have ever been convicted of a~~
24 ~~specified criminal act and, if so, the specified criminal~~
25 ~~act involved, the date of conviction and the place of~~
26 ~~conviction; and~~

27 ~~(5)~~ (3) Whether the applicant or any of the other
28 individuals listed pursuant to subparagraph (1) above has
29 (1) had a previous license under this code suspended or
30 revoked, as well as the date of the suspension or
31 revocation, and (2) whether the applicant has been a
32 partner in a partnership or an officer, director or

1 principal stockholder of a corporation whose license
2 under this code has previously been suspended or revoked
3 including the name and location of the establishment for
4 which the license was suspended or revoked, as well as
5 the date of the suspension or revocation; and
6 ~~(6)~~ (4) Whether the applicant or any other individual
7 listed pursuant to subparagraph (1) above holds any other
8 license under this code and, if so, the names and
9 locations of such other licensed establishments; and
10 ~~(7)~~ (5) The single classification of license for which
11 the applicant is filing; and
12 ~~(8)~~ (6) The location of the proposed establishment,
13 including a legal description of the property site, and
14 a legal street address; and
15 ~~(9)~~ The names of all employees dates of birth and aliases
16 ~~used for the proposed establishment, if known, or, if~~
17 ~~presently unknown a statement to that effect; and~~
18 ~~(10)~~ (7) The applicant's mailing address; and
19 ~~(11)~~ (8) A site plan and certified survey drawn to
20 appropriate scale of the proposed establishment
21 indicating but not limited to all property lines, rights-
22 of-way, and the location of buildings, parking areas and
23 spaces, curb cuts and driveways and shall state and
24 indicate on the survey that the distance and locational
25 requirement of section 500.31 of the Zoning Code
26 [appendix F] have been satisfied; and
27 ~~(12)~~ (9) A floor plan drawn to appropriate scale of the
28 proposed establishment indicating, but not limited to:
29 a. All windows, all doors, all entrances and
30 exits; and
31 b. All fixed structural interior features,
32 including but not limited to doors, walls,

1 stages, partitions, projection booths,
2 admission booths, adult booths, concession
3 booths, stands, counters and similar
4 structures; and

5 c. All proposed improvements or enlargements to
6 be made, which shall be indicated and
7 calculated in terms of percentage of increase
8 in floor size; and

9 ~~(13)~~ (10) The petition number of the adopted zoning
10 resolution approving the use, or the circumstances in
11 support of a claim the use has a valid nonconforming
12 status; and

13 ~~(14)~~ (11) List the name and phone number of the person
14 for the building division to contact to schedule the
15 inspection; and

16 ~~(15)~~ (12) List the phone number of the existing or
17 proposed establishment; and

18 ~~(16)~~ (13) A notarized, signed and sworn statement that
19 the information within the application is truthful,
20 independently verifiable and complete.

21 . . .

22 Section 17-165. Review.

23 (a) The departments shall conduct and complete an
24 investigation of the application within ~~fifty~~ ~~(50)~~
25 twenty-one (21) days from receipt of the application (day
26 ~~50~~ 21).

27 If a provision of this code, including general building,
28 fire, or health codes, are found to be in violation, the
29 respective department shall immediately notify the
30 occupational licensing department of the violation by
31 marking the application as rejected, state the reasons
32 and offer suggestions for correction.

1 ~~Upon receipt of the rejected application, the~~
2 ~~occupational licensing department shall wait until day 50~~
3 ~~for the review from other departments. Then, the~~
4 ~~occupational licensing department shall notify the~~
5 ~~applicant of the denial.~~

6 Upon receipt of a rejected application from any reviewing
7 agency, the Occupational Licensing Department shall
8 promptly send the applicant a copy of the rejected
9 application from the agency. Upon receipt of comments by
10 all reviewing agencies, the Occupational Licensing
11 Department shall send the applicant a letter of license
12 denial if a license has been rejected by any agency, or
13 shall notify the applicant by letter that the license has
14 been approved for issuance upon payment of appropriate
15 license fees.

16 All communications regarding approval or denial shall be
17 issued by and through the occupational licensing
18 department. Any statements issued directly or
19 independently by the review departments shall not be
20 deemed to create a reliance or estoppel situation as to
21 the provisions of this code.

22 (b) The occupational licensing department shall issue or
23 deny application within ~~sixty (60)~~ thirty (30) days from
24 the date of filing of a complete application. Upon
25 expiration of the ~~sixty-day~~ thirty day period, the
26 applicant may demand a license and begin operating the
27 establishment for which a license is sought, unless and
28 until the occupational licensing department notifies the
29 applicant of a denial of the license application and
30 states the reasons for the denial.

31 . . .

1 Section 17-182. Prohibitions at Establishments Allowing
2 of Alcoholic Beverages

3 (a) Prohibition.

4 (1) No person or employee shall expose to public view
5 his or her human genitals, pubic region, or ~~cleavage~~
6 opening between the human buttocks, i.e. the anal cleft
7 or any simulation thereof in any establishment selling,
8 serving or allowing the consumption of alcoholic
9 beverages.

10 (2) No person maintaining, owning or operating an
11 establishment serving alcoholic beverages shall suffer or
12 permit any person or employee to expose to public view
13 his or her human genitals, pubic region, or ~~cleavage of~~
14 opening between the human buttocks, i.e. the anal cleft
15 or any simulation thereof within the establishment
16 selling, serving or allowing the consumption of alcoholic
17 beverages.

18 ~~(3) No person maintaining, owning or operating an~~
19 ~~establishment serving alcoholic beverages shall suffer or~~
20 ~~permit [the exposure to public view of] any human~~
21 ~~genitals, pubic region or cleavage of the human buttocks,~~
22 ~~or the simulation thereof within the establishment~~
23 ~~selling, serving or allowing the consumption of alcoholic~~
24 ~~beverages.~~

25 (3) No person or employee shall engage in a private
26 performance as defined in Section 17-147(26) of this Code
27 and regulated in Section 17-183(b)(2) of this Code in any
28 establishment selling, serving or allowing the
29 consumption of alcoholic beverages.

30 (4) No person maintaining, owning or operating an
31 establishment serving alcoholic beverages shall suffer or

1 permit any person or employee to engage in a private
2 performance as defined in Section 17-147(26) of this
3 Code, and regulated in Section 17-183(b)(2) of this Code,
4 within any establishment, selling, serving or allowing
5 the consumption of alcoholic beverages.

6 (5) No person or employee anywhere in an establishment
7 selling, serving or allowing consumption of alcoholic
8 beverages, shall display specified anatomical areas
9 except on a stage as described in Section 17-183(b)(1) of
10 this Code, or on a portable platform a minimum of eight
11 (8) inches and a maximum of twelve (12) inches in height
12 and a minimum of eighteen (18) inches in diameter. The
13 height of a platform where a person displays specified
14 anatomical areas shall be measured from the surface upon
15 which patrons view the performance. In no event shall
16 the patron be permitted to occupy the stage or platform
17 where a person displays specified anatomical areas while
18 a person displays specified anatomical areas.

19 (6) No person maintaining, owning or operating an
20 establishment selling, serving, or allowing consumption
21 of alcoholic beverages, shall suffer or permit any person
22 to expose specified anatomical areas within the
23 establishment except on a stage as described in Section
24 17-183(b)(1) of this Code and on a portable platform a
25 minimum of eight (8) inches and a maximum of twelve (12)
26 inches in height and a minimum of eighteen (18) inches in
27 diameter. The height of a platform where a person
28 displays specified anatomical areas shall be measured
29 from the surface upon which patrons view the performance.
30 In no event shall the patron be permitted to occupy the
31 stage or platform where a person displays specified

1 anatomical areas while a person displays specified
2 anatomical areas.

3 (7) Employees and operators of an adult entertainment
4 establishment selling, serving, or allowing consumption
5 of alcoholic beverages, shall not engage in any outdoor
6 activity at the adult entertainment establishment which
7 advertises, promotes, or encourages attendance at the
8 adult entertainment establishment if such activity is
9 visible outside the premises of the establishment.

10 (8) No person or employee shall engage in a lap dance
11 anywhere in an adult entertainment establishment selling,
12 serving, or allowing consumption of alcoholic beverages.

13 (9) No person maintaining, owning or operating an adult
14 entertainment establishment selling, serving, or allowing
15 consumption of alcoholic beverages, shall suffer or
16 permit any person to engage in a lap dance within the
17 establishment.

18 (10) No person or employee in an establishment selling,
19 serving, or allowing consumption of alcoholic beverages,
20 shall display specified anatomical areas, or any
21 simulation thereof, unless such establishment has a valid
22 adult entertainment license issued pursuant to this Code.

23 (11) No person maintaining, owning or operating an
24 establishment selling, serving, or allowing consumption
25 of alcoholic beverages, shall suffer or permit any person
26 or employee to display of specified anatomical areas, or
27 any simulation thereof, unless such establishment has a
28 valid adult entertainment license issued pursuant to this
29 Code.

30 Section 17-183. Supplementary requirements.

31 (b) Adult dancing establishment. In addition to the

1 general requirements for an adult entertainment
2 establishment contained in sections 17-181 and 17-182
3 above, an adult dancing establishment shall, regardless
4 of whether it is licensed, observe the following special
5 requirements:

- 6 (1) ~~It shall have~~ A stage ~~provided~~ for the display
7 or exposure of ~~human genitals, pubic region or~~
8 ~~cleavage of the human buttocks~~ specified anatomical
9 areas by any employee shall consisting of a
10 permanent platform (or other similar permanent
11 structure) raised a minimum of eighteen (18) inches
12 above the surrounding floor and encompassing an
13 area of at least one hundred (100 square feet; and
14 (2) Any area in which a private performance occurs
15 shall:

- 16 a. Have a permanently open entrance way not
17 less than seven (7) feet wide and not less
18 than seven (7) feet high, which entrance way
19 will never be closed or partially closed by
20 any curtain, door or other partition which
21 would be capable of wholly or partially
22 obscuring any person situated in the area; and
23 b. Have a wall-to-wall, floor-to-ceiling
24 partition of solid construction without any
25 holes or opening which partition may be
26 completely or partially transparent and which
27 partition separates the employee from the
28 person viewing the display; and
29 c. Have, except for the entrance way, walls
30 or partitions of solid construction without
31 any holes or openings in such walls or

1 partitions.

2 (3) In adult entertainment establishments which do
3 not sell, serve or allow the consumption of
4 alcoholic beverages, the exposure by any employee
5 of human genitals, pubic region or opening between
6 the human buttocks, i.e. the anal cleft, cleavage
7 ~~of the human buttocks,~~ or any simulation thereof,
8 to public view shall be restricted to the stage
9 required in Section 17-183(b)(1) above and areas
10 for private performances as specified in Section
11 17-183(b)(2) above. Nonemployees or patrons shall
12 not be permitted closer than four (4) feet to the
13 stage edge when any employees expose those
14 anatomical areas listed in this subsection.

15 . . .

16 Section 17-198. Engaging in prohibited activity.

17 ~~(4) To display or expose at the establishment less~~
18 ~~than completely and opaquely covered any specified~~
19 ~~anatomical area unless such employee is~~
20 ~~continuously positioned away from any person other~~
21 ~~than another employee, and unless such employee is~~
22 ~~in an area as described in section 17-182(b); or~~

23 (54) To engage in the display or exposure of any
24 specified anatomical area while simulating any
25 specified sexual activity with any other person at
26 the establishment, including with another employee;
27 or

28 (65) To engage in a private performance unless
29 such employee is in an area which complies with the
30 special requirements set forth in section ~~17-182(b)-~~
31 17-183(b)(2); or

1 ~~(7)~~ (6) To intentionally touch, while exposing
2 specified anatomical areas, the clothed or
3 unclothed body of any person at the adult
4 entertainment establishment, excluding another
5 employee, at any point below the neck and above the
6 knee of the person, excluding that part of the
7 person's arm below the wrist, commonly referred to
8 as the hand; or

9 ~~(8)~~ (7) To allow any person, excluding another
10 employee, to touch any portion of the body of the
11 employee exposing specified anatomical areas below
12 the neck and above the knee, excluding that part of
13 the employee's arm below the wrist, commonly
14 referred to as the hand; and excluding touching the
15 lower half of the thigh for the purpose of placing
16 tips in a garter.

17 **Part 2. Captions**

18 The captions, section headings, and section designations
19 used in this amendment are intended for convenience of usage
20 only. It shall have no effect on the interpretation of the
21 provisions of this Ordinance.

22 **Part 3. Repeal of Laws in Conflict**

23 All local laws and ordinances applying to the
24 unincorporated area of Palm Beach County in conflict with any
25 provision of this ordinance are hereby repealed.

26 **Part 4. Severability**

27 If any section, paragraph, sentence, clause, phrase, or
28 word of this ordinance is for any reason held by the Court to
29 be unconstitutional, inoperative or void, such holding shall
30 not affect the remainder of this ordinance.

1 Part 5. Inclusion in the Code of Laws and Ordinances

2 The provision of this ordinance shall become and be made
3 a part of the code of laws and ordinances of Palm Beach
4 County, Florida. The Sections of the ordinance may be
5 renumbered or relettered to accomplish such, and the word
6 "ordinance" may be changed to "section," "article," or any
7 other appropriate word.

8 Part 6. Effective Date

9 The provisions of this ordinance shall become effective
10 upon receipt of acknowledgement by the Secretary of State.

11 **APPROVED AND ADOPTED** by the Board of County Commissioners
12 of Palm Beach County, on the 17th day of December, 1991.

13 PALM BEACH COUNTY, FLORIDA,
14 BY ITS BOARD OF COUNTY COMMISSIONERS

15 *[Signature]*
16 By Chairman

17 APPROVED AS TO FORM AND
18 LEGAL SUFFICIENCY

19 *[Signature]*
20 COUNTY ATTORNEY

 JOHN B. DUNKLE, CLERK
 Board of County Commissioners
By *[Signature]*
 DEPUTY CLERK

21 Acknowledgement by the Department of State of the State
22 of Florida, on this, the 23rd day of December, 1991.

23 **EFFECTIVE DATE:** Acknowledgement from the Department of
24 State received on the 27th day of December, 1991, at
25 3:44 P.M. and filed in the Office of the Clerk of the Board of
26 County Commissioners of Palm Beach County, Florida.